REMARKS

Claims 1-21 are currently pending in the above-identified application. Claims 1, 5, 7, 9, 10 and 13-19 have been amended. Support for these amendments is identified in the following remarks. No new matter is believed to be added by these amendments.

Rejections under 35 U.S.C. §102

Claims 1-5 and 16-20 stand rejected under 35 U.S.C. §102(b) as being allegedly anticipated by Rolfes (U.S. Patent No. 5,972,861) for the reasons of record set forth in Paper #6. (Applicants separately respond (below) to the rejection under 35 U.S.C. §103 in view of Rolfes.)

The Examiner maintains that the claims are anticipated in view of Rolfes, believing that the recited compositions of the instant claims comprise two portions which can be combined as an agglomerate. In particular, the Examiner reasons that the first portion and the second portion are mixed as recited by claim 1, which allegedly simply means mixing at least these two components together to form a resultant detergent composition. The office action refers to the specification at page 4, lines 5-20 of the instant specification, in which it is stated that "[e]ach portion typically comprises a plurality of particles ..., [w]hen the particles [*sic*, portions] are admixed, the particles are co-mingled, but remain physically distinct ..., [t]he portions can be combined in any suitable ratios, according to the desired properties of the final composition" (emphasis by Examiner). The Examiner concludes that Applicants are taking two different components, mixing them to form a final composition in which the portions are mixed but remain physically distinct, as in an agglomeration process, and forming a resultant composition. Thus, the Examiner's believes his interpretation of the instant claims is consistent with the explanation given in the specification.

Applicants respectfully traverse this rejection and the Examiner's reasoning. Applicants believe that the Examiner has not correctly interpreted the cited section of the instant specification. Each portion comprises a plurality of particles. When the portions, or particles, are admixed, the particles are commingled, but remain physically distinct. (See Specification, page 4, lines 6-8.) Thus, the admixed or combined portions are a mixture of the particles, in which the particles are commingled, but the particles remain physically distinct.

Applicants also refer the Examiner to page 16, line 27 to page 17, line 7 of the instant Specification, where Applicants clarify that "post-added," "post-adding" or "post addition" refer to the addition of a first (or α-sulfofatty acid ester) portion, as a separate portion, to a second portion after formation of the second portion. By admixing the α-sulfofatty acid ester after the second portion is formed, the amount of additional di-salt formation is reduced. The α-sulfofatty acid ester is not joined to the second portion; instead, they remain physically distinct particles.

Thus, Applicants respectfully disagree that the present claims encompass an agglomerate containing the first and second portions. Applicants respectfully note that in an agglomerate, the ingredients are joined together into a cluster or mass. Because agglomerates are typically formed using a liquid binder or mechanical pressure, the combined particles would not remain physically distinct as separate particles.

The Examiner also reasons that Rolfes teaches bars and granules which are made by mixing distinct components together, and that this teaching of Rolfes is sufficient to anticipate the claimed invention. Applicants respectfully disagree, because the disclosed bars or granules would not have separate portions.

Applicants also respectfully note that Rolfes teaches that, "[o]ther non-surfactant additive[s] suitable for use in the present invention include those additives found in traditional laundry detergent compositions. ... The only limitation in the use of such additives is that they do not degrade either the composition or the material it cleans." (Rolfes, U.S. Patent No. 5,972,861, col. 4, lines 53-59.) Thus, Rolfes discloses

excluding additives that would degrade ingredients, such as, for example, α-sulfofatty acid esters, not segregating those additives into a separate portion, or particles.

In contrast, Applicants' instant claims generally recite first, or α-sulfofatty acid ester, particles, and second, or detergent, particles. The first particles remain physically distinct from the second particles. (*See* Specification, page 3, line 25 to page 4, line 13.) The second or detergent particles can include a detergent component that causes more than a minor amount of additional di-salt formation. Thus, the instant claims contain distinct structural elements that distinguish Applicants' claimed invention from that of Rolfes, which teaches excluding such components, not sequestering them.

Applicants therefore respectfully believe that Rolfes does not anticipate Applicants' pending claims. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claims 1-5 and 16-20 as allegedly anticipated by Rolfes.

Claims 1-6, 8 and 16-20 stand rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Ospinal *et al.* (U.S. Patent No. 5,965,508). The Examiner believes that Ospinal *et al.* teach compositions suitable for formation into mild personal cleansing or laundry detergent bars comprising from about 30% to about 99% by weight of a mixture of anionic surfactants comprising an alpha sulfonated alkyl ester and a sulfonated fatty acid; from about 0.5% to about 50% by weight of a fatty acid, and from about 0.1 % to about 50% by weight water (referring to the abstract). The Examiner concludes that the broad teachings of Ospinal *et al.* anticipate the material limitations of claims 1-6, 8 and 16-20.

Applicants respectfully traverse this rejection. Ospinal *et al.* teach bars, such as soap bars, syndet bars or combo bars, gels, pastes or solutions or solid flakes. (*See* Ospinal *et al.*, col. 3, lines 28-30; col. 7, lines 56-64; and col. 16, lines 29-41.) Referring to the example cited by the Examiner, Example 11 (*see* Ospinal *et al.*, col. 22, line 26 to col. 23, line 38), a sulfonated methyl ester is combined with other ingredients to form an surfactant base. The surfactant base includes other ingredients, such as

sodium hydroxide and sodium silicate. The surfactant base is melted, and Part B (water) and Part C (Coco fatty acid, EDTA, *etc.*) are added to the melt. While the mixture is hot, it is poured into soap molds. Thus, Applicants believe that Ospinal *et al.* teach combining the α-sulfofatty acid ester with other detergent components into a homogeneous mixture, in which the components are not physically distinct after mixing.

In contrast, referring to Applicants' claims 1 and 16, include, *inter alia*, a first portion of particles comprising α-sulfofatty acid ester, which are post-added to a second portion of particles comprising additional detergent components that cause more than a minor amount of additional di-salt formation. As discussed above, post-adding refers to the addition of the first (α-sulfofatty acid ester) portion of separate particles to the second portion of particles, such that the particles are mixed, but remain physically distinct after mixing.

Further, with respect claim 8, Applicants respectfully note that Ospinal *et al.* disclose a mixture of anionic surfactants (*see* Ospinal, at col. 2, lines 38-40 and col. 3:11-16 (disclosing alpha sulfonated alkyl ester and sulfonated fatty acid)), not a composition substantially free of secondary anionic surfactant.

Thus, Applicants do not believe that claims 1-6, 8 and 16-20 are anticipated by Ospinal *et al.* Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claims 1-6, 8 and 16-20 as allegedly anticipated by Ospinal *et al.*

Without acquiescing to the propriety of the Examiner's rejection, but to proceed with more compact prosecution of this case, Applicants amend claims 1 and 16 to further clarify that the recited composition is a granular or powdered detergent composition having reduced di-salt formation in which the first portion of particles which are post-added to the second portion of particles, whereby the first and second particles are commingled, but remain physically distinct. Dependent claims 5, 7 and 17-19 are also amended for consistency with claims 1 and 16. Support for this amendment is found throughout the instant specification, such as, for example, at page 4, lines 6-13 and page

15, line 13 to page 16, lines 26. Applicants believe this amendment makes clear that which was inherent in these claims. No new matter is believed to be added by these amendments.

Rejections under 35 U.S.C. §103

Claims 1-5 and 16-20 stand rejected in the alternative under 35 U.S.C. §103 as being allegedly obvious in view of Rolfes (U.S. Patent No. 5,972,861) for the reasons of record set forth in Paper #6. The Examiner maintains that the claims are obvious in view of Rolfes, believing the recited compositions of the instant claims comprise two portions which can be combined as an agglomerate.

Applicants respectfully traverse the rejection of these claims in view of Rolfes, Applicants believing that Rolfes fails to teach or suggest all of the limitations of Applicants' instantly claimed invention. As discussed above, Applicants respectfully do not believe that Rolfes discloses a composition having reduced di-salt formation comprising a first portion and a second portion, each portion comprising particles which remain physically distinct when mixed. Further, Applicants do not believe Rolfes teaches a second portion which contains an additional detergent component that causes more than a minor amount of additional di-salt formation. Instead, Rolfes teaches that "[o]ther non-surfactant additive[s] suitable for use in the present invention include those additives found in traditional laundry detergent compositions. ... The only limitation in the use of such additives is that they do not degrade either the composition or the material it cleans." (U.S. Patent No. 5,972,861, at col. 4, lines 53-59.) Thus, Rolfes appears to teach excluding materials that degrade components, such as α-sulfofatty acid esters; Rolfes does not teach or suggest a composition in which substances which cause more than a minor amount of additional di-salt formation are sequestered in the composition.

Furthermore, Applicants do not believe there is a suggestion or motivation in Rolfes to modify Rolfes' disclosed composition to make Applicants' claimed composition. Although the Examiner asserts that Rolfes teaches that the composition can be in solid, liquid, paste, granular or bead form, Rolfes teaches that such forms would be

homogeneously mixed and would exclude di-salt forming substances. Indeed, there is no teaching or suggestion in Rolfes to sequester di-salt forming substances, instead of simply excluding them. "The mere fact that the [reference] may be modified in the manner suggested by the Examiner does not make the modification obvious unless the [reference] suggested the desirability of the modification." *In re Fritch*, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). Further, by teaching exclusion, as opposed to segregation, Rolfes teaches away from Applicants' claimed invention. A reference "must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." MPEP §2141.02.

Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of these claims as allegedly obvious in view of Rolfes.

Claims 1, 4, 5-10 and 13-19 stand rejected under 35 U.S.C. §103 as being allegedly unpatentable over EP 336,740 (EP '740) for the reasons of record set forth in Paper #6. Claims 1-20 stand rejected under 35 U.S.C. §103 as being allegedly unpatentable over Kaminsky (U.S. Patent No. 4,487,710) for the reasons of record set forth in Paper #6.

The Examiner believes that the reasoning with respect to Rolfes (regarding the structural portions as recited by the instant claims) is applicable and pertinent to the compositions taught by EP '740 or Kaminsky. In particular, the Examiner believes EP '740 or Kaminsky teach granular compositions made by mixing the components together, which suggests the claimed invention of mixing the first portion and second portion.

Applicants respectfully traverse this reasoning for the reasons set forth above with respect to Rolfes.

Applicants respectfully believe that EP '740 does not disclose a composition comprising first, or α-sulfofatty acid ester, portion of particles, and a separate, second, or detergent, portion of particles, where the second or detergent portion comprises additional detergent components that cause more than a minor amount of additional di-salt formation. EP '740 appears to generically discloses a methods, such as

dry blending, co-agglomeration, and spray-drying for forming a detergent composition. Applicants do not believe EP '740 teaches or suggests segregating α-sulfofatty acid ester from substances that cause more than a minor amount of additional di-salt formation. For example, referring to Examples 1-6, EP '740 generally discloses compositions including anionic surfactant and sodium tripolyphosphate. Those examples do not teach segregating α-sulfofatty acid ester from a material such as sodium tripolyphosphate, which can cause additional di-salt formation. Instead, referring to column 4, lines 33-51, EP '740 teaches combining a surfactant system with builder material and filler salts by spray drying to form a base powder. That slurry can be spray dried and mixed with heat-sensitive materials, such as bleaches and enzymes. Nonionic surfactants can be sprayed onto the base powder.

Further, EP '740 does not disclose, teach or suggest that di-salt formation is a problem, or that reduced di-salt formation is desired. Because EP '740 fails to appreciate this problem, it fails to suggest any solution to the problem, such as segregating components that cause more than a minor amount of additional di-salt formation from the α-sulfofatty acid ester.

Thus, Applicants do not believe that Applicants' instantly claimed invention is obvious in view of EP '740. Applicants respectfully request that the Examiner reconsider and withdraw the rejection of the claims in view of EP '740.

Applicants also traverse the rejection of claims 1-20 in view of Kaminsky. The Examiner reasons that Kaminsky discloses an intimate mixture of anionic and ethoxylated surfactants, which are agglomerated with neutral or alkaline salt. (*See* Kaminsky, col. 2, lines 46-65, col. 3, lines 11-25, and col. 8, lines 41-51.)

Applicants respectfully note that Kaminsky teaches that agglomeration can be performed, for example, by using a suitable binder or mechanically mixing under pressure. (*See* Kaminsky, col. 2, lines 49-52; col. 3, lines 11-25.) For example, referring to Example 1 of Kaminsky, a paste comprising a mixture of surfactants is sprayed over

Group B components of sodium tripolyphosphate, hydrated zeolite, sodium silicate, among other components. The resulting product is an agglomerate.

In contrast, Applicants' claimed compositions reduce such disalt formation through physically distinct α-sulfofatty acid ester and second particles. Based on the cited example and the general disclosure of Kaminsky, Applicants do not believe the Kaminsky teaches or suggests forming a composition having such separate portions of particles. Instead, by teaching an agglomerate, Kaminsky teaches away from Applicants' claimed composition. In addition, because Kaminsky fails to appreciate the problem of di-salt formation, Applicants respectfully believe that Kaminsky fails to teach or suggest any solution to this problem. In particular, Kaminsky teaches contacting α-sulfofatty acid ester with sodium tripolyphosphate, hydrated zeolite or sodium silicate, which can increase di-salt formation by the α-sulfofatty acid ester.

Applicants therefore do not believe Kaminsky properly provides any teaching, motivation or suggestion to modify the composition of Kaminsky to make Applicants' claimed invention. Applicants respectfully request that the Examiner reconsider and withdraw the rejection of the claims in view of Kaminsky.

The Examiner also reasons that EP '740 or Kaminsky teach granular detergent compositions containing the same components in the same proportions as recited by the instant claims, and the Examiner maintains that these references would suggest detergent compositions having the same di-salt formation properties as recited by the instant claims. The Examiner states that the reason or motivation to modify a reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. The Examiner notes that it is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant.

Applicants clarify that because EP '740 and Kaminsky do not disclose, teach or suggest that di-salt formation is a problem, or that reduced di-salt formation is desired, they fail to suggest Applicants' solution to this problem, such as segregating components that cause more than a minor amount of additional di-salt formation from the

α-sulfofatty acid ester. Applicants noted the absence of appreciation of the problem of disalt formation in EP '740 or Kaminsky as further evidence of a lack of motivation to modify the disclosed compositions to make Applicants' claimed composition.

Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claims 1, 4, 5-10 and 13-19 as allegedly obvious in view of EP '740, and of claims 1-20 as allegedly obvious in view of Kaminsky.

Claims 8-15 stand rejected under 35 U.S.C. §103 as being allegedly unpatentable over Rolfes (U.S. Patent No. 5,972,861) for the reasons of record set forth in Paper #6.

Applicants initially note that the rejection in Paper No. 6 was for claims 8 and 15, not 8 to 15. Applicants believe the reference to claims 8 to 15 is a typographical error. Because the reasoning in Paper No. 6 only addresses claims 8 and 15, Applicants respond accordingly.

Applicants respectfully traverse the rejection of claims 8 and 15 over Rolfes for the reasons set forth above. Applicants respectfully believe that because claims 1 and 9, from which claims 8 and 15 depend, respectfully, are not obvious in view of Rolfes, claims 8 and 15 are not obvious. In addition, Applicants note that Rolfes teaches combining methyl ester sulfonate with a base soap. The disclosed base soaps are anionic surfactants. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claims 8 and 15 in view of Rolfes.

Claim 6 stands rejected under 35 U.S.C. §103 as being allegedly unpatentable over Rolfes (U.S. Patent No. 5,972,861) as applied to claims 1-5 and 16-20 above, and further in view of Kaminsky (U.S. Patent No. 4,487,710) or EP 336,740 (EP '740).

Applicants respectfully traverse the rejection of claim 6 in view of Rolfes, or the combination of Rolfes and Kaminsky or EP '740. As discussed above, Applicants do not believe any of Rolfes, Kaminsky or EP '740 disclose, teach or suggest

sequestering α-sulfofatty acid ester from detergent components that cause more than a minor amount of additional di-salt formation. Instead, as discussed above, Rolfes teaches excluding di-salt forming substances, whereas Kaminsky and EP '740 appear to teach combining such components with α-sulfofatty acid ester in the same portion. Thus, Applicants do not believe that these references, alone or in combination, teach or suggest Applicants' claimed compositions. Further, Applicants do not believe that Rolfes is properly combinable with Kaminsky and EP '740 because these references provide opposite teachings. Applicants do not believe that references that teach away from each other are properly combinable.

Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejections of claim 6.

Without acquiescing to the Examiner's rejections, but to proceed with more compact prosecution of this case, Applicants amend claims 1 and 16 to further clarify that the recited composition is a granular or powdered detergent composition having reduced di-salt formation in which the first portion of particles is post-added to the second portion of particles. The particles are commingled, but remain physically distinct. Claim 9 is amended to further clarify that the α-sulfofatty acid ester is post-added to the detergent portion comprising particles, whereby the first α-sulfofatty acid ester and detergent particles are commingled, but remain physically distinct. Support for these amendments is found throughout the instant claims, such as, for example, at page 4, lines 6-13. Applicants believe the amendments make clear that which was inherent in these claims.

Claim 16 is also amended to recite that detergent portion is formed by granulating, spraying drying or agglomeration while the α-sulfofatty acid ester is powdered or agglomerated and comprises methyl ester sulfonate. Support for this amendment is found throughout the instant specification, such as, for example at page 15, lines 13 to page 16, line 26.

Claims 5, 7, 10, 13-15 and 17-19 are amended for consistency with claims 1, 9 and 16.

Applicants respectfully believe that these amendments further clarify the claimed invention and that these claims are patentably distinct over the cited art.

Double Patenting Rejections

Claims 1-21 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. 09/574,764. Although the conflicting claims are not identical, they are not allegedly patentably distinct from each other because claims 1-27 of 09/574764 encompass the material limitations of the instant claims. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Applicants respectfully inform the Examiner that Application No. 09/574,764 has been allowed.

Claims 1-21 also stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,057,280. The Examiner reasons that although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-25 of U.S. Patent No. 6,057,280 encompass the material limitations of the instant claims.

Without acquiescing to the Examiner's rejection, Applicants will submit a terminal disclaimer solely for its statutory purpose of removing these obviousness type double patenting rejections, and not as an acquiescence on the merits of the rejections (*See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 874, 20 USPQ2d 1392, 1394-94 (Fed. Cir. 1991). Applicants respectfully request that the these rejections be held in abeyance until the claims are otherwise held allowable by the Examiner.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is urged. If the Examiner believes a telephone conference would aid in the prosecution of this case in any way, please call the undersigned at 206-467-9600.

Respectfully submitted,

Dated: 11/1/02

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APPENDIX

VERSION WITH MARKINGS TO SHOW CHANGES MADE

1. **(Once amended)** A granular or powdered detergent composition having reduced di-salt formation, comprising:

~~a~~ first ~~portion~~ particles comprising α-sulfofatty acid ester; and

~~a~~ second ~~portion~~ particles comprising additional detergent components that cause more than a minor amount of additional di-salt formation, the second particles ~~portion~~ having a free moisture content of less than about 6 weight percent;

the first particles ~~portion~~ post-added to the second particles ~~portion~~, whereby the first and second particles are commingled, but remain physically distinct.

5. **(Once amended)** The composition of claim 1, wherein the second particles ~~portion~~ further comprise ~~comprises~~ a builder, a nonionic surfactant, a secondary anionic surfactant, a polymer dispersant, an oxidizing agent, a biocidal agent, a foam regulator, a binder, an anticaking agent, an activator, a catalyst, a thickener, a stabilizer, a fragrance, a soil suspending agent, a soil release agent, a filler, a brightener, a UV protectant, an enzyme, or a mixture thereof.

7. **(Once amended)** The composition of claim 1, wherein the free moisture content of the second particles ~~portion~~ is between about 1 to about 3 weight percent.

9. **(Twice amended)** A granular or powdered α-sulfofatty acid ester detergent composition, comprising:

~~a~~ detergent particles ~~portion~~ comprising at least one detergent component that causes more than a minor amount of additional di-salt formation; and

α-sulfofatty acid ester particles which are ~~is~~ post-added to the detergent particles ~~portion~~;

~~the detergent portion and α-sulfofatty acid ester each comprising a plurality of separate particles~~; the α-sulfofatty acid particles ester post-added to the detergent particles, whereby the α-sulfofatty acid ester particles and detergent particles are commingled, but remain physically distinct in the detergent composition, and whereby additional di-salt formation is reduced.

10. **(Once amended)** The composition of claim 9, wherein the α-sulfofatty acid ester particles are a powder ~~is powdered~~.

13. **(Once amended)** The composition of claim 9, wherein the detergent particles ~~portion~~ further comprise ~~comprises~~ a builder, a nonionic surfactant, a secondary anionic surfactant, a polymer dispersant, an oxidizing agent, a biocidal agent, a foam regulator, a binder, an anticaking agent, an activator, a catalyst, a thickener, a stabilizer, a fragrance, a soil suspending agent, a filler, a brightener, a UV protectant, an enzyme, or a mixture thereof.

14. **(Once amended)** The composition of claim 9, further comprising ~~an~~ adjuvant particles ~~portion~~.

15. **(Once amended)** The composition of claim 14, wherein the adjuvant particles comprise ~~portion comprises~~ an enzyme, a fragrance or an oxidizing agent.

16. **(Once amended)** ~~An~~ A granular or powdered α-sulfofatty acid ester detergent ~~composition~~ prepared by:

providing at least one detergent component that causes more than a minor amount of additional di-salt formation;

forming the at least one detergent component by granulating, spray drying or agglomerating into ~~a~~ detergent particles ~~portion~~; and

post-adding a powdered or agglomerated α-sulfofatty acid ester to the detergent portion so that the α-sulfofatty acid ester and detergent particles are commingled, but remain physically distinct; whereby the amount of the di-salt formation is reduced.

17. (**Twice amended**) The ~~method~~ composition of claim 16, wherein the α-sulfofatty acid ester is free of components that cause more than a minor amount of additional di-salt formation.

18. (**Once Amended**) The composition of claim 16, further prepared by:

reducing the free moisture content of the detergent particles ~~portion~~ to between about 1 to about 6 weight percent.

19. **(Once Amended)** The composition of claim 16, wherein the detergent particles are a ~~portion is~~ powder, pellets, beads, or granules.